

WAGANAKISING ODAWAK STATUTE
VICTIMS RIGHTS

SECTION I. SHORT TITLE

This Statute may be cited as the “Victims Rights Statute.”

SECTION II. PURPOSE

The purpose of this Statute is to protect the rights of crime victims. This Statute repeals and replaces the “Victims Rights Act,” WOTCL 9.600.

SECTION III. JURISDICTION

This Statute applies to victims, as defined in this Statute, of crimes under the laws of LTBB.

SECTION IV. DEFINITIONS

- A. “Court”** means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
- B. “Crime”** means a violation of the laws of the Little Traverse Bay Bands of Odawa Indians for which the offender, upon conviction, may be punished by imprisonment or fine.
- C. “Defendant”** means a person charged with having committed a crime against a victim.
- D. “Final disposition”** means the ultimate termination of the criminal prosecution of a defendant including, but not limited to, dismissal, acquittal or imposition of a sentence by the Court.
- E. “LTBB or Tribe”** means the Little Traverse Bay Bands of Odawa Indians.

1 **F. “Prisoner”** means a person who has been convicted and sentenced to imprisonment for
2 having committed a crime against a victim.

3
4 **G. “Prosecutor”** means the Little Traverse Bay Bands of Odawa Indians Tribal Prosecutor.

5
6 **H. “Victim”** means any of the following:

7
8 1. Any individual who suffers direct or threatened physical, financial or emotional
9 harm as a result of the commission of a crime;

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11 2. A parent, guardian or custodian of a victim who is less than eighteen (18) years of
12 age if the parent, guardian or custodian so chooses; or

13
14 3. A parent, guardian or custodian of a victim who is so mentally incapacitated that
15 he or she cannot meaningfully understand or participate in the legal process.

16
17 4. If a victim is physically unable to exercise the rights under this Statute, the victim
18 may designate his or her spouse or a child of fifteen (15) years of age or older, parent,
19 sibling, grandparent or legal representative of the victim to act in place of the victim
20 during the duration of the physical disability.

21 22 23 **SECTION V. RIGHTS OF CRIME VICTIMS**

24
25 All crime victims have the following rights:

26
27 **A. Right to be Protected.** The following measures may be taken to protect victims as
28 necessary and appropriate:

29
30 1. Have police escorts to and from court;

31
32 2. Have secure waiting areas separate from those of the accused and his or her
33 family, witness and friend during court proceedings;

1 **3.** Have bail denied or have specific conditions imposed on bail release such as
2 protective orders for defendants who are found to present a danger to the community, the
3 victims, or witnesses;
4

5 **4.** Have the victim's address, place of employment, and other personal identification
6 information kept confidential based upon the victim's reasonable apprehension of acts or
7 threats of physical violence or intimidation by the defendant or at the defendant's
8 direction against the victim or the victim's immediate family; and
9

10 **5.** Have any other action taken that is necessary to protect the victim from the
11 accused.
12

13 **B. Right to Notice.** The right to reasonable, accurate, and timely notice of the victim's
14 rights and any public court proceeding, or any parole proceeding, involving the crime or any
15 release or escape of the accused and the right not to be excluded from any public court
16 proceeding.
17

18 **1. Initial Notice.** Within twenty four (24) hours after the initial contact between the
19 victim of a reported crime and law enforcement having the responsibility of investigating
20 that crime, law enforcement must give the victim information about the availability of
21 emergency and medical services and the rights of the victim.
22

23 **2. Notice of Charges.** The right to be notified immediately, if the Prosecutor
24 chooses not to file charges against the Defendant or drops charges being held against the
25 Defendant.
26

27 **3. Notice of Release.**
28

29 **a.** Within twenty four (24) hours after the arraignment of the defendant for a
30 crime, the prosecutor must give the victim notice of whether the defendant is
31 eligible for pretrial release and notice if the defendant is released from custody by
32 bond or otherwise.
33

34 **b.** The Prosecutor may move that the bond or personal recognizance of a
35 defendant be revoked where the victim's statement or affidavit asserts acts or

1 threats of physical violence or intimidation by the defendant or at the defendant's
2 direction against the victim or the victim's immediate family.
3

4 **3. Notice of Trial Process.** Within seven (7) days after the arraignment of the
5 defendant for a crime, the Prosecutor must give the victim a written notice in plain
6 English of each of the following:
7

- 8 **a.** A brief statement of the procedural steps in the processing of a criminal
9 case;
10
- 11 **b.** Suggested procedures if the victim is subjected to threats or intimidation;
12 and
13
- 14 **c.** The appropriate person to contact for further information.
15

16 **5. Notice of Sentencing.**
17

- 18 **a.** Upon request of the victim, the victim must be given notice of the
19 following:
20
 - 21 **i.** The defendant's conviction;
22
 - 23 **ii.** The crimes for which the defendant was convicted;
24
 - 25 **iii.** The victim's right to make a written or oral impact statement for
26 use in the preparation of a pre-sentence investigation report concerning the
27 defendant;
28
 - 29 **iv.** The address and telephone number of the probation office, if any,
30 which is to prepare the pre-sentence investigation report;
31
 - 32 **v.** That a pre-sentence investigation report and any statement of the
33 victim included in the report will be made available to the defendant
34 unless exempted from disclosure by the Court;
35

1 vi. The victim's right to make an impact statement at sentencing;

2
3 vii. The time and place of the sentencing proceeding

4
5 b. The notice given by the Prosecutor to the victim must be given by any
6 means reasonably calculated to give prompt and actual notice.

7
8 **6. Notice of Appeal.**

9
10 a. Upon request of the victim, the Court must notify the victim of the
11 following:

12
13 i. That the defendant has filed an appeal of his or her conviction;

14
15 ii. A brief explanation in plain English of the appeal process,
16 including the possible dispositions;

17
18 iii. Whether the defendant has been released on bail or other
19 recognizance pending the disposition of the appeal;

20
21 iv. The time and place of any appellate court proceedings and any
22 changes in the time or place of those proceedings; and

23
24 v. The result of the appeal.

25
26 b. In the event the defendant's conviction is reversed and the case is returned
27 to the trial court for further proceedings, the victim must have the same rights
28 previously requested during the proceedings, which led to the appeal.

29
30 **7. Notice of Release.** Upon request of the victim, the Court must notify the victim of
31 the defendant's release.

32
33 **8. Notice of Escape.** A victim who requests notice of the escape and the Prosecutor
34 who is or has prosecuted the crime for which the person is detained or under sentence
35 must be given immediate notice of the escape of the person accused, convicted or

1 imprisoned for committing a crime against the victim. The notice must be given by
2 means reasonably calculated to give prompt and actual notice.

3
4 **C. Right not to be Excluded.** The victim has the right to attend proceedings related to the
5 crime for which the defendant is charged, unless the Court, after receiving clear and convincing
6 evidence, determines that testimony by the victim would be materially altered if the victim heard
7 other testimony at the proceeding. The victim has the right to have a support person present
8 during such proceedings such as a family member, trusted advocate, or legal representative.

9
10 **D. Right to be Heard During Proceedings.** The right to be heard at any court or agency
11 proceeding involving release, plea, sentencing, or any parole proceeding.

12
13 1. The victim has the right to submit or make a written or oral impact statement to
14 law enforcement for use in preparing investigations and reports.

15
16 2. The victim has the right to appear and make an oral impact statement at the
17 sentencing of the defendant.

18
19 3. The victim has the right to address or submit a written statement for consideration
20 by a probation officer, a parole board or any other group or person having authority over
21 the prisoner's release.

22
23 **E. Right to Confer with the Prosecutor.** The Prosecutor must offer the victim an
24 opportunity to consult with the Prosecutor to obtain the victim's views about the disposition of a
25 crime, including the victim's views about dismissal, plea or sentence negotiations, and pretrial or
26 probation programs.

27
28 **F. Right to Restitution.** The right to full and timely restitution as provided by law.

29
30 1. Consistent with LTBB criminal laws, the Court may order that the defendant
31 make restitution to any victim of the defendant's course of conduct that gives rise to the
32 conviction or the victim's estate.

33
34 2. If the Court does not order restitution, or orders only partial restitution, the Court
35 must state on the record the reasons for that action.

1
2 **3.** If a crime results in damage to or loss or destruction of property of a victim of the
3 offense, the order of restitution may require that the defendant do either of the following:
4

5 **a.** Return the property to its owner or to another person designated by the
6 owner; or
7

8 **b.** If return of the property is impossible, impractical or inadequate, pay an
9 amount equal to the value of the property on the date of the damage, loss or
10 destruction.
11

12 **4.** If a crime results in physical or psychological injury to a victim, the order of
13 restitution may require that the defendant do one or more of the following, as applicable:
14

15 **a.** Pay an amount equal to the cost of actual medical and related professional
16 services and devices relating to physical and psychological care;
17

18 **b.** Pay an amount equal to the cost of actual physical and occupational
19 therapy and rehabilitation;
20

21 **c.** Reimburse the victim or the victim's estate for after-tax income loss
22 suffered by the victim as a result of the offense; or
23

24 **d.** Pay an amount equal to the cost of psychological and medical treatment
25 for members of the victim's family that has been incurred as a result of the
26 offense.
27

28 **5.** If a crime resulting in bodily injury also results in death of a victim, the order of
29 restitution may require that the defendant pay an amount equal to the cost of actual
30 funeral and related expenses.
31

32 **6.** Instead of restitution, and if the victim or the victim's estate consents, the order of
33 restitution may require the defendant make restitution in services in lieu of money, or
34 make restitution to a person designation by the victim or victim's estate if that person
35 provided services to the victim as a result of the crime.

1
2 7. If the Court orders restitution, the Court must, if the victim is deceased, order that
3 the restitution be made to the victim's estate.
4

5 8. Any order of restitution must be as fair as possible to the victim or victim's estate
6 without unduly complicating or prolonging the sentencing process.
7

8 9. Any amount paid to a victim or victim's estate as restitution must be set off
9 against any amount later recovered as compensatory damages by the victim or the
10 victim's estate in any federal, state or Tribal civil proceeding.
11

12 10. If the defendant is placed on probation or paroled, any restitution ordered under
13 this section must be a condition of that probation or parole. The Court may revoke
14 probation or parole if the defendant fails to comply with the order and if the defendant
15 has not made a good faith effort to comply with the order. In determining whether to
16 revoke probation or parole, the Court must consider the defendant's employment status,
17 earning ability, financial resources, and the willfulness of the defendant's failure to pay
18 and any other special circumstances that may have a bearing on the defendant's ability to
19 pay.
20

21 11. An order of restitution may be enforced by the Prosecutor, a victim, or victim's
22 estate named in the order to receive the restitution in the same manner as a judgment in a
23 civil action.
24

25 **G. Right to Proceedings without Unreasonable Delay.** The right to proceedings free from
26 unreasonable delay. If the Court is ruling on a continuance or other delay in the proceedings, the
27 Court must consider the impact of the delay on the victim. Victims who are children, elders, or
28 otherwise vulnerable must be given preference in setting the Court docket.
29

30 **H. Right to be Treated with Fairness and Respect.** The right to be treated with fairness
31 and with respect for the victim's dignity and privacy. The victim must be treated with fairness,
32 respect, and dignity throughout the criminal justice process. During proceedings the Prosecutor
33 and the Court must take this into consideration when requesting or ordering testing,
34 testimony, or any other potentially invasive act.
35

1 **I. Right to Return of Property.** The right to the expeditious return of personal property
2 seized as evidence whenever possible. Law enforcement must promptly return to the victim
3 property belonging to that victim which is taken in the course of the investigation, except that
4 law enforcement:

- 5
- 6 1. Must not return property which is contraband;
- 7
- 8 2. Must not return property if the ownership of the property is disputed until the
9 dispute is resolved; and
- 10
- 11 3. Must retain as evidence any weapon used in the commission of the crime and any
12 other evidence if the Prosecutor certifies that there is a need to retain that evidence in lieu
13 of a photograph or other means of memorializing its possession by a law enforcement
14 officer.
- 15

16 **J. Right to Enforcement.** The right to enforcement of these rights and access to other
17 available remedies under the laws of LTBB. Upon request of a victim, the Prosecutor must ask
18 the Court to enforce the rights of the victim.

19

20 **K. Right to View Copies of Record and Evidence.** The right to view copies of reports and
21 other evidence related to the proceeding, provided that the records will not compromise the
22 prosecution of the case. Upon the closing of an investigation or if still open, before the statute of
23 limitations has run on the particular crime or within one year after the case goes cold, the victim
24 has a right to view any and all records and evidence gathered by law enforcement. Such items do
25 not include anything that is privileged. If any of the items contain confidential information, that
26 information must be redacted before the victim is allowed to view it.

27

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29 **SECTION VII. SEVERABILITY**

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31 If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for
32 any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion
33 shall be deemed a separate, distinct and independent provision and such holding shall not affect
34 the validity of the remaining portions thereof.

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2 **SECTION VIII. EFFECTIVE DATE**
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4 Effective upon the signature of the Executive or 30 days from Tribal Council approval
5 whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council
6 override of the veto.
7
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9

10 **CERTIFICATION**
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